

Federal Court



Cour fédérale

Date: 20220810

Docket: IMM-5343-22

Citation: 2022 FC 1189

Ottawa, Ontario, August 10, 2022

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

SSN AND ESN

Applicants

and

**THE MINISTER OF CITIZENSHIP AND
IMMIGRATION**

Respondent

ORDER AND REASONS

[1] The Applicants, by letter dated June 29, 2022, commenced this application for leave and judicial review of a decision of the Refugee Appeal Division of the Immigration and Refugee Board. Much of the material filed was done so on a password-protected basis as confidential material in keeping with this Court's Consolidated COVID-19 Practice Direction of June 24, 2022.

[2] The Applicants submitted a simplified motion for anonymity made pursuant to the Pilot: Simplified Motion Procedure. That motion does not appear to be opposed by the Respondent, and is accordingly granted. With immediate effect, the Applicants named in the style of cause of this application shall be SSN and ESN. Moreover, all references to the Applicants in the materials filed shall be amended to refer to them as SSN and ESN, rather than their full names.

[3] The Applicants also seek an order that the file be treated on a confidential basis, “effectively sealing the court records, so as to protect the Applicants’ identities and the details of their claim.” That motion is opposed by the Respondent.

[4] The sealing of a court file is an extraordinary measure, and there is a high burden on the moving party to support the request with clear, non-speculative evidence.

[5] The test for a confidentiality order pursuant to Rule 151 of the *Federal Courts Rules*, SOR/98-106, was recently described by Justice Rochester in *Garcia Puebla v Canada (The Minister of Citizenship and Immigration)*, 2022 FC 879, at paragraph 9, as follows:

[T]he test for issuing a confidentiality order, as articulated by the Supreme Court of Canada in *Sierra Club of Canada v Canada (Minister of Finance)*, 2002 SCC 41 at para 53 [*Sierra Club*] and as recast in *Sherman Estate v Donovan*, 2021 SCC 25 at para 38 [*Sherman*], has not been met. There are three core prerequisites that are to be established by a person seeking an exception to the open courts principle (*Sherman* at para 38). A court may order discretionary limits on openness only where: (1) openness poses a serious risk to an important public interest; (2) the order sought is necessary to prevent that risk; and (3) the benefits of the order outweigh its negative effects (*Sherman* at para 38, citing *Sierra Club* at para 53).

[6] The Applicants assert as the basis for the order sought that “[d]isclosing the Applicants’ identities and making the Court record public would place the Applicants and their remaining family members in Israel at a heightened risk of persecution from community members in Israel and/or members of the state of Israel.”

[7] The facts they submit would place them and their family at risk are their names, that they are secretly Muslim and that they improperly used the Law of Return to enter Israel.

[8] I agree with the Respondent’s submissions that these facts have been known to the State of Israel since 2013 after their failed refugee claims in Sweden and Norway. In reply, the Applicants assert that their fears go beyond Israel knowing these facts and includes that they are now claiming the need for protection from the Israeli intelligence service, and the experiences of family members in this regard.

[9] There is no need to go into detail concerning these assertions. It is noted that they have been rejected by the Immigration and Refugee Board in the decision under review. There is simply no credible and non-speculative evidence before the Court that supports a basis for this fear from either the Israeli authorities or the community at large. For this reason, the motion for a confidentiality order must be dismissed.

[10] However, in keeping with the anonymity order that has been granted, the Court orders that all materials filed shall replace the Applicants’ names with “SSN” and “ESN” and the names

of their family members shall also be redacted, although their familial relationship shall be preserved or indicated.

[11] The Applicants are to refile in the public file all materials previously filed in keeping with this Order, as is the Respondent. All time lines shall be calculated from the date of the public refiling.

ORDER in IMM-5343-22

THIS COURT ORDERS that:

1. The motion for an anonymity order is granted;
2. The Applicants in the style of case shall be amended to be SSN and ESN, with immediate effect;
3. The confidentiality motion is dismissed;
4. The Applicants shall refile publically all previously filed materials with the names of the Applicants being changed to SSN and ESN and all family members' names being redacted, with their familial relationship being preserved or indicated;
5. The Respondent shall publically refile all materials it has previously filed with the amendments as described immediately above; and
6. All materials filed hereafter shall be done in accordance with paragraph 4 of this Order.

"Russel W. Zinn"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-5343-22

STYLE OF CAUSE: SSN and ESN v THE MINISTER OF CITIZENSHIP
AND IMMIGRATION

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: ZINN J.

DATED: AUGUST 10, 2022

WRITTEN REPRESENTATIONS BY:

Erin Simpson FOR THE APPLICANTS

John Loncar FOR THE RESPONDENT

SOLICITORS OF RECORD:

Landings LLP FOR THE APPLICANTS
Barristers and Solicitors
Toronto, Ontario

Attorney General of Canada FOR THE RESPONDENT
Toronto, Ontario